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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

## No. 78-1867

**AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO; AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION NO. 1135; AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION NO. 1196; and AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION NO. 1277,**

*Petitioners,*

VS.

**IOWA BEEF PROCESSORS, INC.,**

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## OPINIONS BELOW

The unanimous opinion of the Court of Appeals which affirmed the verdict of the jury and the opinion and judgment of the trial court is not published, but is reproduced in the Appendix to the Petition for Writ of Certiorari (Pet. A1-A16). The opinion of the Honorable Warren K. Urbom, Chief Judge, United States District

Court for the District of Nebraska, sitting by designation in the Northern District of Iowa, is unreported but is reproduced in the Appendix to the Petition for Writ of Certiorari. (Pet. A17-A41).

## JURISDICTION

The opinion of the Court of Appeals was filed May 1, 1979. The Petition for Writ of Certiorari was filed on June 16, 1979. The Petitioners invoke jurisdiction of this court under 28 U.S.C. § 1254(1), but the Respondent urges that Petitioners are not entitled to review because, under Rule 19-1(b) of the Rules of the Supreme Court of the United States, a review on writ of certiorari is not a matter of right, but of sound judicial discretion. It will be granted only where there are special and important reasons therefor, and the Petitioners have not shown any such special or important reasons. No facts exist in this case which would entitle the Petitioners to review for any of the reasons set out in Rule 19-1(b). Thus, the opinion of the Court of Appeals:

(a) is not in conflict with the decision of another Court of Appeals on the same matter;
(b) does not decide an important question of federal law which has not been, but should be settled by this Court; and
(c) does not decide a federal question in conflict with the applicable decisions of this Court.

On the contrary, the jury verdicts, the judgment of the trial court, and the opinion of the Court of Appeals were all the result of careful deliberation and research and no valid basis for further review exists.



## STATUTES INVOLVED

Respondent agrees that Sections 301(a) and (b) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185(a) and (b), which are set out on page 3 of the Petition filed herein, were involved, but states that subsection (e) of Section 301 of the Labor Management Relations Act of 1947, as amended, [29 U.S.C. § 185(e)] was also involved. That subsection is set out as follows:

> "(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Respondent agrees that Section 7 of the National Labor Relations Act (29 U.S.C. § 157), as set out on page 4 of the Petition, was involved.

Respondent does not agree that Section 6 of the Norris-LaGuardia Act (29 U.S.C. § 106), set out on page 4 of the Petition, was involved in this case.

## QUESTIONS PRESENTED

1. Whether this Court should grant certiorari to review one of the three verdicts returned by the jury, namely the jury verdict awarding damages to the Respondent, as Plaintiff, for breach by Petitioners (the unions) of the collective bargaining agreement pertaining to Respondent's Fort Dodge, Iowa plant, and the judgment and opinion of the trial court and the unanimous opinion of the Court of Appeals affirming that verdict, where the collective bargaining agreement at issue contained a no-strike agreement, and also an agreement that "the union shall promptly order its members to resume their normal duties notwithstanding the existence of any picket line", and where the union officials, at the time, publicly recognized that the strike was illegal and asserted that the union members should return to work.

2. Whether this Court should grant certiorari to review rulings of the trial court, which have been affirmed by the Court of Appeals, on the admissibility of evidence of acts and conduct of the union members which resulted in work stoppages, where that evidence was material and relevant on many issues, including whether there was a breach of the collective bargaining agreements and whether the International union was responsible for those breaches.

3. Whether this Court should grant certiorari to review the forms of verdict used by the trial court and approved by the Court of Appeals where, under the facts, the form of verdict could not have changed the result or have prejudiced the Petitioners, and where the



Petitioners do not and cannot, under the record, assert any of the reasons for granting certiorari enumerated in Rule 19 of the Rules of the Supreme Court of the United States.

## STATEMENT OF THE CASE

This action was brought in three counts by Respondent Iowa Beef Processors, Inc. (IBP), under Section 301 of the Labor Management Relations Act (29 U.S.C. § 185), for the violation by defendants of the contract provisions of three collective bargaining agreements covering Respondent's Mason City, LeMars and Fort Dodge, Iowa plants respectively. The portion of the collective bargaining agreements violated in each case was the provision prohibiting strikes of any kind during the terms of the collective bargaining agreements [App. to Pet. A4, footnote 4 (Mason City); A5, footnote 5 (LeMars); A7 (Fort Dodge)]. A supplement to the agreement with respect to Fort Dodge required the union, in the event of a work stoppage, "To promptly order its members to resume their normal duties *notwithstanding the existence of any picket line.*" (Emphasis supplied) (App. to Pet. A7). There was substantial evidence that the defendant unions did not in good faith comply with this requirement, although there was evidence that union officials stated publicly that the strike was unauthorized, and that the employees should return to work. (App. to Pet. A30).

The Union members who respected the picket line at Fort Dodge were paid strike benefits by the International. (App. to Pet. A5 and A11).

"At a Union meeting in September 1969, Jim Robinson, an official of the International, allegedly directed Mason City plant employees to '[d]o anything you can to slow down the line or stop the line.' Through September 1969, the Mason City plant experienced incidents of damage to machinery and slowdowns in the production processes." (App. to Pet. A3).

On October 6, 1969, a dispute arose over whether production could continue while a saw remained inoperable and, as a result of that dispute, all of the employees left the plant and they did not return to work until May 25, 1970. (App. to Pet. A4).

"Shortly after the conflict at the Mason City plant came to a head, the LeMars plant began to experience similar difficulties. During October 7-17, 1969, production dropped sharply due to various alleged acts of sabotage, including considerable damage to machinery. On October 17, after IBP suspended two employees for fighting, Bob McKelvey, president of the LeMars local, demanded immediate reinstatement of one of the workers. IBP's refusal to meet that demand precipitated a walkout by the employees that afternoon. Work at the LeMars plant did not resume until June 11, 1970." (App. to Pet. A4 and A5).

After appropriate instructions by the Court, the jury awarded actual damages against the International Union and its Local 1135 (Fort Dodge) in the amount of $1,129,489.00 as to Count I, against the International Union and its Local 1196 (Mason City) in the amount of $355,692.00 as to Count II, and against the International Union and its Local 1277 (LeMars) in the amount of $271,411.00 as to Count III.



The statement of the case by Petitioners on page 7 purports to set out "the jury verdicts." That statement is inaccurate and misleading in that it does not show the forms of verdict submitted to the jury. The statement by Petitioners uses the word "jointly" with reference to the compensatory damages. It is important that the Court consider the actual forms of verdict, as submitted to the jury, which are set out in Appendix A—pp. A1-A4 to this brief, *which do not include the word "jointly."*

The jury further awarded, on two of the three counts, punitive damages which were set aside by the trial court. The trial court entered judgment for the compensatory damages awarded on each of the three counts.

The Eighth Circuit Court unanimously affirmed the trial court in its disposition of all issues.

## ARGUMENT

### I.

### THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH THE DECISIONS OF THIS COURT OR WITH THE DECISIONS OF OTHER COURTS OF APPEALS.

Petitioners argue generally that the Court of Appeals simply held that a broad no-strike clause waives the right to engage in sympathy strikes, and that this holding of the Eighth Circuit is in conflict with the decisions of this Court and with the decisions of the First, Sixth and Seventh Circuits. Petitioners are wrong in both contentions.

At the outset, it must be pointed out that Petitioners' entire argument is based on the assumption that the strike at Fort Dodge was a "sympathy strike", a contention never made in the trial court until *after the close of the Plaintiff's evidence.* Furthermore, during the trial itself, counsel for the unions expressly declined to admit that the walkouts at the three plants were connected in any way with the strike at Dakota City. (App. B to this Brief—p. A4).

The walkout at Fort Dodge was a part of the scheme and device of the International union, through its locals, to punish and force IBP to submit to the union demands. This is shown by the statements of the members of the International that they would take the plants down one at a time, beginning with Mason City, that they would bring IBP to its knees, and that the union members at Fort Dodge need have no concern as to whether or not the strike was legal or illegal. (App. to Pet. A3-A5). The walkout at Fort Dodge on October 20 followed the



walkout at Mason City on October 6 and the walkout at LeMars on October 17.

The argument of counsel for Petitioners repeatedly refers to the Fort Dodge agreement as having only a "general no-strike clause." The collective bargaining agreement at Fort Dodge contained more than a "general no-strike clause." The argument of counsel for Petitioners ignores the language of the supplement to the no-strike clause in that agreement, which reads as follows:

> "In the implementation of Article VI of the agreement the following rules shall be binding on the parties.
>
> I. The Union, both local and Internation[al], shall immediately take the following steps.
>
> (1) the Union shall declare publicly that such action is unauthorized.
>
> (2) the Union shall promptly order its members to resume their normal duties notwithstanding the existence of any picket line." (App. to Pet. A7).

This language was considered and emphasized by the Court of Appeals in its opinion: "In addition, the supplement to the no-strike clause, indicating that union members are 'to resume their normal duties notwithstanding the existence of *any* picket line' (emphasis supplied), permits the inference that under the collective bargaining agreement the local union waived its right to support any picket line, including a picket line of another local (of the International Union), at an employer's plant." (App. to Pet. A8).

Furthermore, as the Court of Appeals points out, the record showed that the union representatives publicly declared the Fort Dodge strike was unauthorized, and that the union members should return to work. Accord-

ingly, the Court of Appeals held that: "These statements of the Union representatives provide collateral evidence of contractual intent, indicative of the Unions' belief that the sympathy strike violated the Fort Dodge collective bargaining agreement." (App. to Pet. A8).

After pointing out that the determination of the scope of the no-strike obligation required "a case by case analysis of the language", the Court of Appeals held: "In light of the broad wording of the no-strike provision *and the supplementary memorandum, which suggest the provision's total prohibition of strikes*, and in light of the external circumstances indicating the Unions' leadership's understanding that the collective bargaining agreement forbade sympathy strikes, we agree with the district court's conclusion that the language of the bargaining agreement barred sympathy strikes." (Emphasis supplied) (App. to Pet. A9)

**A. The Holding Of The Court Of Appeals Is Not In Conflict With The Decisions Of This Court.**

Petitioners argue that the opinion of the Court of Appeals is in conflict with *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956) and with *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). The opinion of the Court of Appeals does not conflict with either.

There is no conflict with *Mastro Plastics* because:

(1) The dispute in that case related to the continuing existence of the union, and the right to bargain, and not to damages for breach of contract;
(2) It was thus an unfair labor practice case and not a suit for damages for breach of a bargaining agreement;



(3) The language in the governing agreement was not the same language as that of the Fort Dodge agreement; and
(4) The agreement in that case contained no "picket line" clause as did the Fort Dodge agreement.

As Chief Judge Urbom pointed out in the case at bar, there is no declaration in *Mastro* "that a waiver of right to strike must be made in 'clear and unmistakable terms.'" (App. to Pet. A19). Indeed, *Mastro* only held that the no-strike provision in the agreement involved in that case did not prohibit the right to strike against unfair labor practices of the employer.

Likewise, the opinion of the Court of Appeals is not in conflict with *Lincoln Mills* because:

(1) It was a case to compel arbitration;
(2) As pointed out by Chief Judge Urbom in this case (App. to Pet. A24), "'[T]he agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike,' but the court does not say, and it does not follow from the language, that the breadth of an express no-strike obligation is to be reduced to the size of the express arbitration agreement, and the court made the *quid pro quo* statement only in connection with the issue as to whether the federal court has authority to order arbitration. Accordingly, it was the scope of the arbitration provision, which was its concern."; and
(3) The actual holding of *Lincoln Mills* was only that the agreement to arbitrate was enforceable by the unions.

Counsel for Petitioners urge that the obligation not to strike and the duty to arbitrate are ordinarily coterminous, citing and quoting from *Gateway Coal Co. v. United Mine Workers of America*, 414 U.S. 368 (1974). But the contract in that case did not contain a no-strike

clause. There the obligation not to strike had to be implied from the language relating to arbitration in the collective bargaining agreement. Where the obligation not to strike is being implied from arbitration language, as in *Gateway*, the courts have said the agreement to strike will not be broader than the arbitration language.

What Petitioners overlook is the fact that both the trial court and the Court of Appeals held that the Fort Dodge contract *did specifically express an intention* that the agreement to arbitrate and the duty to strike were *not necessarily coterminous*, and this conclusion is fortified by the fact that, as pointed out by the opinion of the Court of Appeals, "In addition, the supplement to the no-strike clause, indicating that the union members are 'to resume their normal duties notwithstanding the existence of *any* picket line' (emphasis supplied), permits the inference that under the collective bargaining agreement the local union waived its right to support any picket line, including a picket line of another local (of the International Union), at an employer's plant." (App. to Pet. A8).

This conclusion is further fortified, as pointed out by the Court of Appeals, by the statements of the union representatives that the strike was unauthorized and the union members should return to work, which were indicative of their belief that the strike violated the collective bargaining agreement. (App. to Pet. A8).

**B. The Decision Of The Court Of Appeals Is Not In Conflict With The Decisions Of Other Circuits.**

Petitioners state that the opinion is in conflict with *NLRB v. C. K. Smith & Co.*, 569 F.2d 162 (1st Cir. 1977), cert. denied 436 U.S. 957 (1978). However, the opinion of the Court of Appeals below is not in conflict with that case because:



(1) As noted by the court (569 F.2d at 168) "there is no 'picket line' clause * * *";
(2) In that case, there was bargaining history shown in the evidence which the court held did not support the notion that sympathy strikes against unfair labor practice were prohibited;
(3) It was not an action for damages for breach of a collective bargaining agreement; and
(4) The case relates to reinstatement rights of unfair labor practice sympathy strikers.

Counsel for Petitioners also cite *Kellogg Co. v. NLRB*, 457 F.2d 519 (6th Cir. 1972), but the opinion of the Court of Appeals below is not in conflict with that case because:

(1) In that case the court held that the sympathy strike clause made no reference to, and did not affect, the right of the members to refrain from crossing the picket line, but only related to the obligation of the union;
(2) By contrast, the Fort Dodge contract expressly required the union to order its members "to resume their normal duties notwithstanding the existence of any picket line", and the no-strike clause itself deals with both the obligation of the union and the members;
(3) That case did not involve and the court did not decide any question relating to the responsibility of the union for violating the no-strike clause; and
(4) That case was a Petition for Review and for enforcement of an NLRB order and not a suit for damages for breach of a bargaining agreement.

Counsel cite *Gary-Hobart Water Corp. v. NLRB*, 511 F.2d 284 (7th Cir. 1975). The opinion of the Court of Appeals below is not in conflict with that case because:

(1) The language of the agreement was not the same as, or similar to that of, the Fort Dodge contract;

(2) The agreement in that case contained no "picket line" clause;
(3) The Court of Appeals for the Seventh Circuit, itself, in a case not cited by Petitioners, declined to follow *Gary-Hobart* in *NLRB v. Keller-Crescent Co.*, 538 F.2d 1291 (7th Cir. 1976); and
(4) The case was an NLRB enforcement proceeding involving unfair labor practices, and not a suit for damages for breach of a bargaining agreement.

Counsel cite *Hyster Co. v. Independent Towing and Lifting Machine Assoc.*, 519 F.2d 89 (7th Cir. 1975). The opinion of the Court of Appeals below is not in conflict with that case because:

(1) It involved orders enjoining unions and their members from work stoppages and was not a suit for damages for breach of the bargaining agreement;
(2) The court's opinion followed the reasoning of the *Gary-Hobart* case, and based its holding on the opinion therein;
(3) The Court of Appeals for the Seventh Circuit itself declined to follow the holding of this case in *NLRB v. Keller-Crescent*, 538 F.2d 1291 (7th Cir. 1976); and
(4) The Court of Appeals for the Seventh Circuit, in the *Keller-Crescent* case (538 F.2d at 1296), expressly stated "accordingly, it is altogether possible that a strike may violate a contract or be illegal even though the employer cannot secure injunctive relief against the strike under *Buffalo Forge*. Whether disciplinary suspensions based upon the strike constitute an unfair labor practice presents a different question." The opinion in that case also stated that "blending of enforcement cases with injunction decisions is no longer viable."



Thus, an analysis of the cases cited and relied on by counsel for Petitioners shows clearly there is no conflict among the circuits and the cases cited by Petitioners from the First, Sixth and Seventh Circuits are reconcilable with the opinion of the Court of Appeals for the Eighth Circuit in this case.

### C. The Decision Of The Eighth Circuit Is Not In Conflict With The Decisions Of This Court, Or With The Decisions Of The Courts Of Appeals, And It Does Not Create Uncertainty With Reference To The Interpretation Of Collective Bargaining Agreements.

Counsel for Petitioners assert that the decision of the Court of Appeals left unanswered the question whether sympathy strikes violate a general no-strike clause. That simply is not true. This is not a case of interpretation of just a "general no-strike clause." Rather, it is a case involving a collective bargaining agreement with its own particular and specific provisions relating to the unions' duty and the members' duties when a picket line appears. The case does not present facts or legal issues which entitle the Petitioners to review by this Court.

## II.

## UNDER RULE 19-1(b) OF THE RULES OF THIS COURT, THERE IS NO VALID GROUND FOR THE GRANTING OF CERTIORARI ON THE BASIS OF THE PETITIONERS' CLAIMED ERROR IN THE ADMISSION OF EVIDENCE.

Petitioners urge this Court to grant certiorari to review the trial court's ruling on evidence, which has been unanimously affirmed by the Court of Appeals, on the asserted basis that by reason of said rulings the Petitioners "were denied due process." The evidence of misconduct and other work stoppages at two of the

plants involved was properly admitted, and its admission was not a denial of due process.

Petitioners, under the record, were not entitled to complain about the rulings of the trial court admitting this evidence because the Petitioners *themselves* offered and introduced into evidence an affidavit which was read to the jury without objection and which enumerated and outlined substantially all of this misconduct and work stoppage evidence. They offered this evidence in support of one of their contentions (that Respondent closed the Mason City plant) which they have since abandoned. (App. C to this Brief—pp. A5-A9).

The Respondent's claims in this case were for breach of contracts by reason of work stoppages at the three plants involved. The evidence of "sabotage" at two of the plants was not admitted solely in support of the claim for punitive damages. On the contrary, this evidence was admitted because (1) the acts of "sabotage" themselves constituted work stoppages in violation of the collective bargaining agreements; (2) the series of acts were of the kind which do not occur in the ordinary course of events, and were, in and of themselves, proof of the participation by both the International and the local unions; (3) this evidence, together with the fact that the International union permitted such acts to occur and ratified the acts, and later paid strike benefits during the work stoppages which resulted, was sufficient to justify a finding by the jury that the unions were responsible for what was done; and (4) it showed a course of conduct and supported what is referred to in the cases as the "mass-action theory". See *Eazor Express, Inc. v. International Brotherhood of Teamsters, Inc.*, 520 F.2d 951 (3rd Cir. 1975), cert. denied, 424 U.S. 935 (1976), rehearing denied, 425 U.S. 908 (1976).



Petitioners' complaint of error is succinctly and directly answered by the language of the opinion of the trial court:

> "The fact that the plaintiff did not offer any evidence of the amount of damage which it suffered from these acts of sabotage alone does not mean that these acts did not result immediately or ultimately in the one prolonged work stoppage or strike, beginning with the date of the closing down of the particular plant, for which damage was proved.
>
> If the plaintiff had sought damages for injury to its property, it may be that the higher degree of proof set out in 29 U.S.C. § 106 would be applicable. However that may be, the plaintiff did not seek such damages.
>
> The claim of the plaintiff stands squarely under § 301. Subsection (e) of § 301 (29 U.S.C. § 185) takes the plaintiff's claim out of the provisions of 29 U.S.C. § 106 and makes the usual rule of agency applicable. No higher degree of proof is necessary in those circumstances. See *United Mine Workers of America v. Patton*, 211 F.2d 742, 748 (C.A. 4th Cir. 1954), *cert. denied*, 348 U.S. 824 (1954); *International Longshoremen's & Warehousemen's Union (CIO) v. Hawaiian Pineapple Company, Ltd.*, 226 F.2d 875 (C.A. 9th Cir. 1955), *cert. denied*, 351 U.S. 963 (1956)." (App. to Pet. A39 and A40.)

The Court of Appeals approved the trial court's opinion, and summarized the record as follows:

> "In admitting the evidence the trial judge commented that 'the presence of numerous similar acts * * * tends to show activity on a concerted basis—planned basis.' We agree. The number and nature of the sabotage incidents bear some relationship to the following issues: whether responsibility for the work stoppages over which IBP sought damages could be traced to the Unions; and whether union officials acted in good faith in instructing union members to resume work." (App. to Pet. A13.)

The rulings on evidence of which Petitioners complain were not erroneous, much less did they deprive Petitioners of due process.

## III.

## THE CLAIM OF PETITIONERS AS TO THE FORM OF THE JURY VERDICTS IS WITHOUT MERIT AND FURNISHES NO BASIS FOR THE GRANTING OF A WRIT OF CERTIORARI UNDER RULE 19-1(b) OF THIS COURT.

There is no valid ground asserted by the Petitioners, based upon their criticism of the forms of verdict, which can properly be the basis for the granting of a writ of certiorari. Counsel for Petitioners state here, as they did in the trial court, and in the Court of Appeals, that the liability of the International union and the Local unions was several and not joint, and urge that the trial court was in error in permitting the jury to award damages against both the International and the Local unions in one form of verdict.

This Court should not be misled by the outline of the jury verdicts as set out on page 7 of the Petition for Writ. That outline uses the word "jointly" in connection with each award of compensatory damages. In point of fact the word "jointly" was never used in the actual verdict forms or in the instructions to the jury. Moreover, the forms of verdict set out by counsel for Petitioners fail to show the choices the jury had, which choices permitted the jury to award separate compensatory damages against *either* the Local *or* the International. (See the actual forms of verdict, as submitted to the jury, set out in App. A to this Brief—pp. A1-A4.)

Under the facts of this case, the forms of verdict submitted was not a holding that the liability of the International and the Locals was joint. As is pointed out in footnote 16, page A14 of the Appendix to the Petition:



> "The trial court carefully instructed the jury that the International and its three affiliated local unions were distinct entities. The instructions did not compel the jury, should it find a given local union liable, to return a verdict against the International. Moreover, the verdict form submitted to the jury specifically permitted it to find either the International or a local union liable, without imputing the liability to the other. In light of the instructions, the joint assessment of actual damages against the International and the respective local unions on each of IBP's breach of contract claims indicates the jury found each organization liable for its particular actions."

Accordingly, the court did not, as counsel for Petitioners allege, require the jury to return a verdict against the International for actual damages in the event it found a local to be liable for actual damages. On the contrary, the form of verdict, as to each count, *expressly permitted the jury to find against either the International, or the Local*, so that on each count it would have been possible for the jury to have found either the International liable, or the Local liable, without finding the other liable. (See App. A to this Brief—pp. A1-A4).

Nowhere in the instructions or in the form of verdict is there any statement that the International and the Locals are *jointly* liable.

The third form of verdict as to each count permitted one figure for the actual damages in the event the jury found against both the International and the Local. This was proper. In the event the jury found both the Local and the International to be liable, there was only one amount of actual damage which could be found as against both. The amount of damages under the record

was necessarily one amount, and in the event the jury found both defendants to be liable on any one count, the jury could have properly returned only that amount of damage as against both defendants.

Petitioners have shown no basis for writ of certiorari which arises from the forms of verdict.

## CONCLUSION

The unanimous decision of the Circuit Court of Appeals affirming the trial court's judgment on the verdict of the jury does not present any important question of federal law unsettled by this Court. It does not conflict with decisions of this Court or with decisions of other courts of appeal. It is not a decision otherwise calling for the supervision of the Supreme Court of the United States. The petition should be denied.

Dated: July 17, 1979

Respectfully submitted,

**P. L. NYMANN**
P. O. Box 1825
Sioux City, Iowa 51102

**HERSCHEL G. LANGDON**
1300 Financial Center
Des Moines, Iowa 50309

*Attorneys for Respondent*

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**HERRICK, LANGDON & LANGDON**
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(515) 282-8150

# APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civ. 73-C-2038-C

IOWA BEEF PROCESSORS, INC., (formerly known as Iowa Beef Packers, Inc.) a corporation,

*Plaintiff,*

*v.*

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO; AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION # 1135; AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION # 1196; and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION # 1277,

*Defendants.*

## VERDICT

We, the jury, find:

ON COUNT I:

A. For Iowa Beef and

1. Against the International *only* and find damages as follows:

   $ _____ for actual damages

   $ _____ for punitive damages

2. Against Local # 1135 *only* and find damages as follows:

   $ _____ for actual damages

   $ _____ for punitive damages

3. Against *both* the International and Local # 1135 and find damages as follows:

   $1,129,489 for actual damages against both the International and Local # 1135

   $ none for punitive damages against the International only

   $ none for punitive damages against Local # 1135 only

B. For both the International and Local # 1135.

ON COUNT II:

A. For Iowa Beef and

1. Against the International *only* and find damages as follows:

   $ _____ for actual damages

   $ _____ for punitive damages

2. Against Local # 1196 *only* and find damages as follows:

   $ _____ for actual damages

   $ _____ for punitive damages



3. Against *both* the International and Local # 1196 and find damages as follows:

   $355,692 for actual damages against both the International and Local # 1196

   $405,500 for punitive damages against the International only

   $14,687 for punitive damages against Local # 1196 only

B. For both the International and Local # 1196.

ON COUNT III:

A. For Iowa Beef and

1. Against the International *only* and find damages as follows:

   $ _____ for actual damages

   $ _____ for punitive damages

2. Against Local # 1277 *only* and find damages as follows:

   $ _____ for actual damages

   $ _____ for punitive damages

3. Against *both* the International and Local # 1277 and find damages as follows:

   $271,411 for actual damages against both the International and Local # 1277

   $405,500 for punitive damages against the International only

   $14,687 for punitive damages against Local # 1277 only

B. For both the International and Local # 1277.

ON COUNTERCLAIM:

A. For Local # 1196 and against Iowa Beef in the amount of $ _____

B. For Iowa Beef.

DATED: June 3, 1977.

/s/ Norman Moklestad
Foreman or Forewoman

## APPENDIX B

"MR. LANGDON: It might help us in cyrstallizing (sic) our position. * * * But at this time I should like to say, it might help us in crystallizing our position if Mr. Bowlus will admit on the record that these walkouts of the local unions at the three plants were connected directly with the action of the International in calling the strike at Dakota City. If that's his position that might help us more than the admission of Mr. Gorman. And if he doesn't want to make that position, then I think we are both in a corner.

THE COURT: Mr. Bowlus.

MR. BOWLUS: I decline that offer, your Honor."

(Joint Deferred Appendix, Vol. 1, p. 305)



## APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Civil No. 69-C-3008-W

UNITED STATES OF AMERICA,

*Plaintiff,*

*v.*

IOWA BEEF PACKERS, INC. and BLUE RIBBON BEEF PACK, INC.,

*Defendants.*

AFFIDAVIT IN SUPPORT OF
MOTION FOR ORDER PERMITTING
CLOSING OF MASON CITY, IOWA FACILITY

STATE OF ILLINOIS )
)ss
COUNTY OF COOK )

I, Harry A. Hendershot, being first duly sworn, on oath state:

1. I have been Corporate Personnel Director of Iowa Beef Packers, Inc. (Iowa Beef) for the past five years. As Corporate Personnel Director, my duties have primarily involved labor relations. During this period I have reported directly to

Arden Walker, Vice President for Industrial Relations, and am presently headquartered in Dakota City, Nebraska.

2. On August 25, 1969, the contract between Iowa Beef and Amalgamated Meat Cutters and Butcher Workmen of North America was terminated, resulting in a work stoppage at Iowa Beef's Dakota City, Nebraska plant. No other Iowa Beef plant was then affected by this work stoppage.

3. Iowa Beef's Mason City, Iowa facility (formerly a Blue Ribbon Beef Pack facility) was not initially affected by the work stoppage because the contract governing that facility does not expire until October 31, 1970. The Mason City facility is also organized by the Amalgamated Meat Cutters and Butcher Workmen of North America.

4. During the period September 8 through September 16, 1969, I received numerous telephone reports from Daryl Burtis, Mason City Plant Superintendent, in which Mr. Burtis described a general and increasing slowdown in the operations of the Mason City facility. This slowdown in the operations of the Mason City facility. This slowdown reduced the Mason City kill by as much as 60 head per day, resulting in substantial losses in profit.

5. On September 16, 1969, I received from Mr. Burtis the first report of intentional sabotage affecting the Mason City facility. Mr. Burtis reported that a large number of metal pins had been thrown into a grinder, stopping the grinding operation and, therefore, the entire slaughter operation.

6. On September 17, 1969, I received from Mr. Burtis a report that two $400.00 bone saws had disappeared. I immediately traveled from Dakota City, Nebraska to Mason City to investigate the incidents reported to me and monitor the situation in the Mason City facility.



7. From September 17, 1969, to the date of this affidavit, with the exception of weekends and three days devoted to other corporate duties, I have been continually in the Mason City facility and have personally observed incidents occurring in that plant as set forth below.

8. During the period September 17 through September 26, 1969, the slowdown continued. The Mason City plant kill was reduced by as much as 81 head below normal, creating substantial additional financial losses for Iowa Beef. In addition, obvious acts of intentional sabotage continued and increased. Metal parts of various types including a 25 pound conveyor trolley and various hooks and other metal parts were thrown in grinders, green ink was introduced into the brine system and sharpened nails were driven into truck tires.

9. Prior to September 27, 1969, the acts of sabotage substantially affected slaughter operations but did not raise serious danger of personal injury to workers.

10. On September 27, 1969, acts of sabotage began which jeopardized the safety of individuals working in the facility. On that date, the main boiler was tampered with, power and lights for the kill floor were shut off, identification tags were removed from the master electrical switch panel box and a large air compressor used in running air knives and other equipment was shut down.

11. On Monday, September 29, 1969, acts of sabotage endangering the safety of individuals continued, culminating in a second shutting off of the power and lights for the main cattle kill floor and simultaneous placing of metal in the grinder. This act endangered the safety of every one of the 36 workers on the floor. In addition, the cooler was tampered with, creating the possibility of a dangerous rupture of ammonia lines and of loss to meat valued in excess of $160,000.00.

12. During the week of September 29, 1969, the prior acts of sabotage continued, including placing of metal parts in the grinder. The grinder (valued at almost $9,000.00) is now damaged to the point where repetition of these acts might throw metal fragments in the area and would require replacement of the grinder.

13. On Tuesday, September 30, 1969, a trailer carrying carcasses from Iowa Beef's West Point, Nebraska, plant to its Dakota City plant was struck by a high-powered rifle bullet. The union now striking the Dakota City plant—Amalgamated Meat Cutters and Butcher Workmen of North America—is the same union presently operating in the Mason City facility described above.

14. Iowa Beef has expended every effort to prevent acts of sabotage and keep the Mason City facility in operation. Additional supervisory and engineering personnel have been flown in from other Iowa Beef facilities to maintain the equipment and act as watchmen in various parts of the facility. These attempts have not prevented sabotage but have merely resulted in clandestine activities being removed to locations not being watched. In addition, Iowa Beef personnel, including myself, have talked with local union officials with respect to these activities. These officials responded that theirs was a highly militant union which was not divided and would stand together. These discussions gave no promise of eliminating or reducing acts of sabotage.

15. Acts of sabotage in the Mason City facility have now escalated to the point where they involve equipment extremely dangerous if operated by those not experienced in its use. Equipment in the plant includes high pressure, high temperature, rendering equipment; boilers; ammonia compressors; many power knives and saws and other similar equipment. Because of the inherently dan-



gerous nature of this equipment and because the union in question has shown a tendency towards violence, the potential for serious or fatal injury to those employed in the Mason City plant cannot be overstated.

16. Because slowdowns and sabotage have caused the Mason City plant to experience financial losses and because these acts of deliberate sabotage have already caused substantial injury to the Mason City facility and create a serious risk of further injury to both individuals and plant facilities, I recommended to my superior, Arden Walker, Vice President for Industrial Relations, that the Mason City plant be closed. Mr. Walker has agreed with my recommendation.

17. No other Iowa Beef operating facility would be closed at this time because no other facility has experienced the acts of sabotage described above.

This affidavit is made solely in support of the Motion of Iowa Beef Packers, Inc. for entry of an order allowing it to close its Mason City, Iowa facility and is made for no other purpose.

Dated this 1st day of October, 1969.

/s/ Harry A. Hendershot

Subscribed and sworn to before me, a Notary Public in and for Cook County, Illinois, by the said Harry A. Hendershot on this 1st day of October, 1969.

/s/ Linnea Fredrickson
Notary Public in and for Cook County, Illinois

# APPENDIX D

"MR. NYMANN: Mr. Bowlus, are you offering any of the exhibits which you identified?

MR. BOWLUS: I thought I may run into an objection, offering your own exhibits in someone else's case. If you don't object, then I will offer them.

MR. NYMANN: If you don't offer them, I will.

MR. BOWLUS: It is stipulated that they may be received?

MR. NYMANN: Yes.

THE COURT: Which ones are you offering, 3, 4, and 5?

MR. BOWLUS: I think that is correct, your Honor.

THE COURT: They are received.

## HARRY A. HENDERSHOT

*Redirect Examination by Mr. Nymann*

Q. Mr. Hendershot, for the purpose of continuity would you please now read to the jury your affidavit, identified as Defendant International Exhibit 3?

A. Do you want me to read all this introductory at the top?

Q. Well if Mr. Bowlus has no objection, you can skip the state and county and begin with the text of it.

A. I, Harry A. Hendershot, being first duly sworn, under oath state:

1. I have been Corporate Personnel Director of Iowa Beef Packers, Inc. (Iowa Beef) for the past five years. As Corporate Personnel Director my duties have primarily involved labor relations. During this period I have reported directly to Arden Walker, Vice



President for Industrial Relations, and I am presently headquartered in Dakota City, Nebraska.

2. On August 25, 1969, the contract between Iowa Beef and Amalgamated Meat Cutters and Butcher Workmen of North America was terminated, resulting in a work stoppage at Iowa Beef's Dakota City, Nebraska plant. No other Iowa Beef plant was then affected by this work stoppage.
3. Iowa Beef's Mason City, Iowa facility, which was formerly Blue Ribbon Beef Pack facility, was not initially affected by the work stoppage because the contract governing that facility does not expire until October 31, 1970. The Mason City facility was organized by the Amalgamated Meat Cutters and Butcher Workmen of North America.
4. During the period from September 8 through September 16, 1969, I received numerous telephone reports from Daryl Burtis, Mason City Plant Superintendent, in which Mr. Burtis described a general increase in slow-down in the operations of the Mason City facility. This slow-down reduced the Mason City kill by as much as sixty head per day, resulting in a substantial loss of profit.
5. On September 16, 1969, I received from Mr. Burtis the first report of intentional sabotage affecting the Mason City facility. Mr. Burtis reported that a large number of metal pins had been thrown into the grinder, stopping the grinder operation and therefore the entire slaughter operation.
6. On September 17, 1969 I received from Mr. Burtis (a report) that two $400 bone saws had disappeared. I immediately travelled from Dakota City, Nebraska to Mason City to investigate incidents reported to me and monitor the situation at Mason City.

7. From September 17, 1969 to the date of this affidavit, with the exception of weekends and three days devoted to other corporate duties, I have been continually at the Mason City facility and have personally observed incidents occurring in that plant as set forth below:
8. During the period September 17 to September 26, 1969 the slow-down continued. The Mason City plant kill was reduced by as much as 81 head below normal, creating substantial additional financial losses for Iowa Beef. In addition, obvious acts of intentional sabotage continued and increased. Metal parts of various types, including a twenty-five pound conveyor trolley, various hooks and other metal parts were thrown in grinders. Green ink was introduced into the brine system; sharpened nails were driven into truck tires.
9. Prior to September 27, 1969 the acts of sabotage substantially affected the slaughter operations but did not raise serious danger or personal injury to workers.
10. On September 27, 1969 acts of sabotage began which jeopardized the safety of individuals working in the facility. On that date the main boiler was tampered with; the power and lights on the kill floor was shut off. Identification tags were removed from the master electrical switch panel box, and the large air compressor used for running air knives and other equipment were shut down. On Monday, September 29, 1969 acts of sabotage endangering the safety of individuals continued, culminating in a second shutting off of power and lights on the main cattle kill floor with simultaneous placing of metal in the grinder. This act endangered the safety of every one of the



thirty-six workers on the floor. In addition, the cooler was tampered with, creating the possibility of dangerous rupture of ammonia lines, and the loss of meat in excess of $160,000.

12. During the week of September 29, 1969 the prior acts of sabotage continued, including placing of metal parts in grinder. The grinder, valued at almost $9,000, has now reached the point where repetition of these acts might throw metal fragments in the area and require replacement of the grinder.
13. On Tuesday, September 30, 1969, a trailer carrying carcasses from Iowa Beef's West Point, Nebraska plant to its Dakota City plant was struck by a high-powered rifle bullet. The union now striking at the Dakota City plant, Amalgamated Meat Cutters and Butcher Workmen of North America, is the same union presently operating in the Mason City facility described above.
14. Iowa Beef has expended every effort to prevent acts of sabotage and keep the Mason City facility in operation. Additional supervisory and engineering personnel have been flown in from other Iowa Beef facilities to maintain the equipment and act as watchmen in various parts of the facility. These attempts have not prevented sabotage but have merely resulted in clandestine activities being removed to locations not being watched. In addition, Iowa Beef personnel, including myself, have talked with local union officials with respect to these activities. These officials responded that theirs was a highly militant union, which was not divided and would stand together. These discussions gave no promise of eliminating or reducing the acts of sabotage.

15. Acts of sabotage at the Mason City facility had (sic) now escalated to the point where they involved equipment extremely dangerous, if operated by those not experienced in its use. Equipment in the plant includes high pressure, high temperature rendering equipment, boilers, ammonia compressors, many powered devices, saws and other similar equipment. Because of the inherent and the dangerous nature of this equipment and because the union in question has shown a tendency toward violence, the potential for serious or fatal injury to those who work at the Mason City plant cannot be overstated.
16. Because of slow-downs and sabotage and because the Mason City plant has experienced financial losses, and because these acts of deliberate sabotage have already caused substantial injury to the Mason City facility it would create a serious risk to (of) further injury, both to individuals and plant facilities, I recommended to my superior, Arden Walker, Vice President of Industrial Relations, that the Mason City plant be closed. Mr. Walker has agreed with my recommendation.
17. No other Iowa Beef-operated facility will be closed at this time because no other facility has experienced acts of sabotage described above. This affidavit is made solely in support of the motion of Iowa Beef Packers, Inc. for entry of an order allowing it to close its Mason City facility; and is made for no other purpose.

Dated this 1st day of October, 1969."

(Joint Deferred Appendix, Vol. 1, pp. 468-474.)